

Multi-Family Housing - Renter Activities

Long term affordability – occupancy, rents, restrictive covenant

HOME – Colorado NSP Comparison

	HOME (safe harbor-minimum)	Colorado NSP
Rents	Lesser of: FMR 30% of income – 65% AMI (HOME Regulation 24 CFR 92.252(a))	The maximum Affordable Rents shall not exceed the Fair Market Rents (FMR) as published annually by the U.S. Department of Housing and Urban Development for each county in Colorado. Please refer to Appendix 8: Fair Market Rents (FMR). For annual updates see: http://www.huduser.org/datasets/fmr.html CO NSP Substantial Amendment, as revised 6/18/09, page 18
Term of affordability	5-20 years depending on amount of funds and type of activity	30 years for ALL rental housing

NOTE: Some differences in High HOME rents and FMR (see current HOME rent data).

CDBG-NSP Grant Agreement - Exhibit B, Section 8.1 - See Appendix 1

CDOH staff should use the LESSER of FMR or High HOME rent in all NSP rental project Grant Agreements

Revision to NSP Substantial Amendment and wording of Grant Agreement to be considered

Occupancy – All households at 120% AMI or less

Units occupied by households at 50% AMI or less – count NSP dollars proportionately

Program Income

The following example illustrates revenues that are considered NSP Program Income. [Note: The example is based on the DOH application format (10 year Operating Pro Forma worksheet), adjusted for NSP purposes omitting information related to Low Income Housing Tax Credits]

Rent Income	\$1,000	
Less Vacancy	\$50	
Other Income	\$10	
Effective Gross Income	\$960	
Total Annual Expenses - Includes all reasonable fees and payments to operating and replacement reserves	\$760	
NET OPERATING INCOME	\$200	
Debt Service on NSP financing (if any)	\$50	NSP PROGRAM INCOME
Other Debt Service	\$50	
Total Debt Service	\$100	
Cash flow Available	\$100	NSP PROGRAM INCOME Proportion of total based on proportion of NSP funding to total project development cost

Grantees and Sub-Grantees will complete the Rental Property – Annual Financial Summary for each NSP assisted rental property promptly after the end of each annual operating period.

Remittance of Program Income

On all checks transmitting program income, clearly indicate:
“CO NSP Grant # _____.”

Grantees

Submit the Rental Property - Annual Financial Summary and any Program Income identified no later than 45 days after the end of the annual operating period to:

NSP Administrative Assistant
Colorado Division of Housing
1313 Sherman Street, Room 518
Denver, CO 80203

Sub-Grantees

Submit the Rental Property - Annual Financial Summary and any Program Income identified no later than 45 days after the end of the annual operating period to:

NSP Administrative Assistant

Colorado Division of Housing
1313 Sherman Street, Room 518
Denver, CO 80203

Transmit a copy of the Rental Property - Annual Financial Summary no later than 45 days after the end of the annual operating period to your Grantee.

Rental of SF (unable to sell)

Need to file Use Covenant before rented

Provide URA Move-In Notice to tenant:

<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378x29CPDH.doc>

Conversion to ownership – no CDBG guidance – policy TBD

Appendix 1 - CDBG-NSP Grant Agreement - Exhibit B, Section 8.1

8. The following subsections of this section are applicable to this Grant: ☒ all subsections; or ☐ §insert only applicable subsection numbers.

8.1. Affordability Requirements.

8.1.1. **NSP Assisted Unit Identification.** Grantee shall designate _____ unit(s) as NSP-assisted units. The units shall be made up of: Insert # of unit-one bedroom, Insert # of unit-two bedroom, Insert # of unit-three bedroom, and Insert # of unit-four bedroom. As these units will be floating units over the period of affordability, as described in **§8.1.3** below, Grantee shall ensure that the designated units will be comparable in terms of size, features, and number of bedrooms to the originally designated NSP units.

8.1.2. **Rent Restrictions.** To insure the rental units in the Project are affordable to LMMI households, all of the rental units shall have the HUD AMI rents, less the HUD approved utility allowance listed below:

9. Insert County 10. Effective. (Date)	11. Rental Rate				
	12. 0-	13. 1-	14. 2-	15. 3-	16. 4-
17. Fair Market Rent	18.	19.	20.	21.	22.
23. % AMI Rent	24.	25.	26.	27.	28.
29. % AMI Rent	30.	31.	32.	33.	34.

8.1.3 **Affordability Term.** Grantee shall ensure that all affordable units identified shall continue to be used to provide housing for low, moderate, and middle-income persons or families for (insert # of years) years from the date of project closeout.

8.1.4 **Use Covenant.** Grantee shall record a use covenant for each Project property in the land records in the county in which such Project property is located, using a form substantially similar to **Exhibit D**. A copy of the recorded use covenant shall be provided to the Department at the time of recording, and is a condition for payment.

8.1.5 **Transfer of Use Covenant.** The use covenant may terminate upon foreclosure or transfer in lieu of foreclosure, unless the owner of record, before the foreclosure, or anyone with business or family ties to the owner, obtains an ownership interest in the property.

8.1.6 **Noncompliance with Use Covenant.** If the Project is not used for housing the above described beneficiaries, at the above described rents during the affordability term, Grantee or its successors and assignees, heirs, grantees, or lessees, shall be required to repay to the State, within sixty days of the State's request, the full amount of the Grant funds distributed for use on the Project. In lieu of repayment, the Department may authorize the Grantee, or its successors and assignees, heirs, grantees, or lessees, to repay the funds to one or more public housing entities or private non-profit corporations.

Appendix 2 Selected FAQ

If a mortgage lender requires that funds be allocated for operating reserves as a condition of the lender approving a mortgage for a multifamily housing project, can NSP1 funds be used for the operating reserves?

Yes, NSP1 funds can be used for operating reserves if the NSP1 grantee can demonstrate that such a requirement is consistent with industry practices and the dollar amount of the required reserves is consistent with local industry standards.

[From FAQ 8/12/09 page 1]

Posted 06/08/09 **What are NSP1 grantees required to do in terms of income certification for rental programs?**

HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but new tenants must meet the prevailing income limits when taking occupancy of an NSP1-assisted unit throughout the period of affordability.

Related Discussion:

To meet the requirement of continued affordability for the NSP1 Program, the Notice in Section II B (3) (a) says that “HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration”.

Section 92.254 of the HOME regulations affects homeowner programs. In practice, homeowners will have their income certified under the Resale Provision at initial occupancy and when a new owner purchases the home. Under the Recapture Provision, the new purchaser does not certify his or her income, but the funds are returned and a new purchaser certifies that they meet the income limits.

For rental programs, the HOME regulations at 92.252 (h) require annual recertification of tenant incomes. However, this section was not adopted in the NSP1 Program because the CDBG Program has not required annual recertification. The sections that were adopted, 92.252 (a), (c), (e), and (f), require initial certification and affordable rents. Grantees have therefore questioned when they must certify the incomes of tenants after initial occupancy.

In keeping with legislative intent, CDBG policy, and income certification in Homeowner Programs, HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but, to ensure consistency, new tenants must meet the prevailing income limits when taking occupancy of

an NSP1-assisted unit throughout the period of affordability. This requirement applies both to tenants below 50% of Area Median Income and those below 120% of median.
From FAQ 8/12/09 page 12-13]

Appendix 3 - NSP – Rental Affordability – NSP Notice Excerpts & HOME Regulation

NSP Notice – October 6, 2008

II. Alternative Requirements and Regulatory Waivers

B. Pre-Grant Process

3. Continued affordability. Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

a. In its NSP action plan substantial amendment, a grantee will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration. (Note that HERA’s continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b).)

HOME Regulation Excerpt

§92.252 Qualification as Affordable Housing: Rental Housing

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

(1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or

(2). A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(c) *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For

all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

(e) *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

Rental Housing Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehabilitation involving refinancing	15
New Construction or acquisition of newly constructed housing	20

(f) *Subsequent rents during the affordability period.*

(1) The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

Appendix 4 NSP Rental Property – Annual Financial Summary

Grantee	Sub-Grantee
Grant #	Sub-Grant #

Annual Operating Period _____ to _____
 Property Address & Identification NSP Activity Type A-B-C-D-E

INCOME	
Rent Received	
Other Income - specify	
GROSS INCOME	0

EXPENSES

Annual Expenses - Itemize below,
 including all reasonable fees and
 payments to operating and
 replacement reserves

1	
2	
3	
4	
TOTAL EXPENSES	0
NET OPERATING INCOME	0

Debt Service 1	
Debt Service 2	
TOTAL DEBT SERVICE	0
CASH FLOW	0

Total Development Cost	100
NSP Funds for Development	10
NSP Proportion of TDC	10%

NSP PI Equals:

NSP Proportion of TDC X Cash Flow	0
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